IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 21ST NOVEMBER 2006 / 30TH KARTHIKA 1928

Ins.APP.No. 21 of 2006()

CMP.16/2006 of E.I.COURT, KOZHIKODE
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APPELLANT/PETITIONER:

E.S.I.CORPORATION, PANCHADEEP BHAVAN,
NORTH SWARAJ ROUND, THRISSUR 680 020,
REPRESENTED BY THE INSURANCE INSPECTOR LEGAL,
KOZHIKODE.

BY ADV. SRI.T.V.AJAYAKUMAR

RESPONDENT/RESPONDENT:

THE KANNAPURAM WEAVERS INDUSTRIAL
CO-OPERATIVE SOCIETY LTD., KANNAPURAM, CHERUKUNNU,
KANNUR, REPRESENTED BY ITS SECRETARY.

BY

THIS INSURANCE APPEALS HAVING BEEN FINALLY HEARD ON 02/08/2006,

THE COURT ON 21/11/2006 DELIVERED THE FOLLOWING:

THOTTATHIL B. RADHAKRISHNAN, J.

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INAP.No.21 OF 2006

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Dated this the 21st day of November, 2006.

JUDGMENT

Can caveats be lodged before Employees' Insurance Court?

2. ESI Corporation lodged a caveat before the Employees' Insurance Court ("Court", for short), in terms of Section 148A of the Code of Civil Procedure ("CPC", for short). The Court refused the lodgment, taking the view that Section 148A of CPC is not applicable to the Court and that neither Employees' State Insurance Act, 1948 ("Act, for short) nor the Rules framed thereunder, invests the Court with power to entertain a caveat. Hence, this appeal by the Corporation.

3. The refused lodgment was on the apprehension that the respondent, who allegedly owes substantial amounts by way of contribution etc. under the Act, is likely to move the Court and obtain interlocutory order against the Corporation which deals with public funds and is

constituted to achieve social welfare goals.

4. Section 74 of the Act provides for the constitution of the Court. Sub-section (3) of Section 75 provides exclusion of jurisdiction of the civil court to decide or deal with any question or dispute enumerated as matters to be decided by the Court. Section 77 dealing with commencement of proceedings, prescribes the period of limitation with reference to the arising of the causes of action, classified into three, as per the Explanation to Sub-section (1A) thereof. The Court deals with causes of action which could have otherwise fallen for adjudication before the civil courts. That is the reason of the exclusion of jurisdiction of the civil courts. Sub-section (4) of Section 78 provides that the order of the Court shall be enforceable as if it were a decree passed in a suit by a civil court. Such deeming provision by which the order of the Court gets treated as a decree passed in a suit by a civil court and the quality of the causes of action that can be dealt with by the Court as well as the nature of the matters enumerated in Section 75(1), as questions and disputes that could be decided upon by the Court, to the exclusion of the jurisdiction of civil court, are materials, ample enough to hold that the Court has all

the trappings of a court of civil jurisdiction and is therefore one.

5. Section 141 of CPC makes the procedure provided by the Code in regard to suits, applicable, as far as it can be, to all proceedings in any court of civil jurisdiction. Coupled with this, is the provision in Section 78(2), requiring the Court to follow such procedure as may be prescribed by the Rules framed by the State Government, which is authorised in Section 96(1)(b) of the Act to make rules, not inconsistent with the Act, in regard to the procedure to be followed in proceedings before the Court and the execution of orders made by the Court. Rule 47, among the rules made, under such power, by the State Government, namely, the Kerala Employees' Insurance Courts Rules, 1958, ("the Rules", for short), provides that in respect of matters relating to procedure or admission of evidence for which no specific provision is made in these rules, the provisions of CPC including the rules made thereunder and the Indian Evidence Act, 1872 shall, so far as may be, apply to proceedings under the Act. Hence, in matters relating to procedure, for which no specific provision is made in the Act or the Rules, CPC, including the rules in its First Schedule shall be followed in the

proceedings before the Court.

6. Except in exceptional circumstances, the rules of procedure and fair play demand that no interlocutory order shall be issued against a person, who would be affected thereby, without being afforded an opportunity of being heard. This is the reason why law stipulates that an ad interim order issued without hearing a person, who would be affected thereby, should be supported by reasons for deferring issuance of notice before making such an order. If a person who apprehends an interlocutory order against him volunteers to be present and offers to take notice and place contentions in opposition, there is no reason to refuse him the opportunity to oppose the grant of ad interim relief. The lodgment of a caveat does not depend upon any opposition to it by the intending plaintiff/petitioner/appellant. Section 148A, though captioned as a right to lodge a caveat, is essentially the recognition of the legal right of an intending opponent to a litigation, to an opportunity of being heard before any interlocutory order is issued. Section 148A of CPC is the legislative recognition of the existence of such an opportunity in an intending opponent and the obligations of the courts to afford to him such opportunity, on request

in that behalf being registered with the court, in the prescribed manner. This is the progressive and purposive manner in which Section 148A of CPC has to be interpreted with the change of times and growth of litigations, in quantity and diversity, though not always in quality. No principle of law, justice, equity, fair play, or good conscience advises me to hold that if a respondent requests for an opportunity of hearing, he should be refused such opportunity and be told that he could avail such opportunity of hearing only after the Court considers issuance of an interlocutory order *ex parte*.

7. For the view that I have taken above, I find formidable support in the decision of the Division Bench of the Allahabad High Court in **Chandrajit v. Ganeshiya (AIR 1987 Allahabad 360)** wherein it was held that a caveat is only an intimation to a Judge notifying that the opposite party be given an opportunity to be heard before any action is taken on the application or proceeding initiated by the other side. Also, following the said decision, the Bombay High Court held in **Mahadeo Band v. M.S.R.T.C. (1992 Mh.L.J.31)** that lodgment of caveats cannot be discouraged by the Industrial or Labour Court or any authority dealing with judicial or quasi judicial function.

8. The right of the ESI Corporation to be heard in opposition to any interlocutory application that may be filed at the instance of a person like the respondent is beyond challenge because such interlocutory order as would be sought for would intervene with the rights and statutory powers of the Corporation to ensure contributions and other payments as are required under the Statute.

9. Hence, it has to be treated as a just and fair practice, to permit the Corporation to lodge caveat before the Court. Section 148A of the CPC can be treated as part of those provisions of the Code that would apply to proceedings before the Court in terms of Section 47 of the Rules, as also in terms of Section 141 CPC.

For the aforesaid reasons, it is declared that a party desirous of lodging a caveat before the Employees' Insurance Court, is entitled to do so and that Court shall, for the purpose of such institution, follow the procedure prescribed in Section 148A and Order, if any, (LIV, in Kerala) of the Code of Civil Procedure.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

Sha/-